United Nations A/C.6/60/L.6

General Assembly

Distr.: Limited
14 October 2005

Original: English

**Sixtieth session**
**Sixth Committee**
Agenda item 108
**Measures to eliminate international terrorism**

# Measures to eliminate international terrorism

## Report of the Working Group

*Chairman*: Mr. Rohan **Perera** (Sri Lanka)

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05-55459 (E) 181005

# I. Introduction

1. Pursuant to General Assembly resolution 59/46 of 2 December 2004 and upon the recommendation of the Ad Hoc Committee, the Sixth Committee decided, at its 1st meeting, on 3 October 2005, to establish a working group with a view to finalizing the draft comprehensive convention on international terrorism and to keep on its agenda the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations.

2. At the same meeting, the Sixth Committee elected Rohan Perera (Sri Lanka) as Chairman of the Working Group. The Committee also decided to open the Working Group to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency.

3. The Organization for the Prohibition of Chemical Weapons and the International Committee of the Red Cross attended the meeting of the Working Group as observers.

4. In keeping with its established practice, the Working Group decided that members of the Bureau of the Ad Hoc Committee would continue to act as Friends of the Chairman during the meetings of the Working Group. However, in view of the fact that Albert Hoffman (South Africa) was no longer available to serve in that capacity and in order to ensure the representation of all regional groups, the Working Group decided to invite Sabelo Sivuyile Maqungo (South Africa) to join the Friends of the Chairman. Thus, Carlos Fernando Díaz Paniagua (Costa Rica), Maria Telalian (Greece), Sabelo Sivuyile Maqungo (South Africa) and Lublin Dilja (Albania) served as Friends of the Chairman. The Working Group paid tribute to Mr. Hoffman for his valuable contribution to its work, particularly his leadership in coordinating and concluding the negotiations on the International Convention for the Suppression of Acts of Nuclear Terrorism.

5. The Working Group held three plenary meetings. It had before it the reports of the Ad Hoc Committee on its sixth[1] and ninth[2] sessions as well as the reports of the Working Group of the Sixth Committee convened during the fifty-third[3] and the fifty-fifth to fifty-ninth[4] sessions of the General Assembly. It also had before it (a) the letter dated 3 August 2005 from the Chairman of the Sixth Committee addressed to the President of the General Assembly (A/59/894), containing the report of the Coordinator on the results of the informal consultations on the draft comprehensive convention on international terrorism, held from 25 to 29 July 2005; (b) the letter dated 1 September 2005 from the Permanent Representative of Egypt to the United Nations addressed to the Secretary-General (A/60/329); (c) the letter dated 30 September 2005 from the Permanent Representative of Egypt to the United Nations addressed to the Chairman of the Sixth Committee (A/C.6/60/2); and (d) the letter dated 5 October 2005 from the Chairman of the Organization of the Islamic Conferences addressed to the Chairman of the Sixth Committee (A/C.6/60/3).

# II. Proceedings of the Working Group

6. At its 1st meeting, on 10 October, the Working Group adopted its work programme and decided to proceed with discussions in informal consultations, which were conducted by the Chairman of the Working Group. The informal

consultations were held on 11 October. The Chairman, together with the Friends of the Chairman, also held wide-ranging bilateral contacts with interested delegations from 11 to 13 October.

7. Discussions focused on the outstanding issues concerning the draft comprehensive convention against international terrorism and on the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations.

8. At its 3rd meeting, on 14 October, the Working Group received reports on the results of the informal consultations and on the discussion in the Working Group on the question of convening a high-level conference. The reports of the Chairman are contained in the annex to the present report. Section A of the annex contains an informal summary of the results of the informal consultations on the draft comprehensive convention against international terrorism and section B of the annex contains an informal summary of discussions in the Working Group on the question of the convening of a high-level conference. These informal summaries are included, in accordance with the established practice for reference purposes only and not as a record of the discussions.

9. The Working Group considered and adopted its report at its 3rd meeting, on 14 October 2005.

*Notes*

[1] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 37* (A/57/37 and Corr.1).

[2] Ibid., *Sixtieth Session, Supplement No. 37* (A/60/37).

[3] A/C.6/53/L.4.

[4] A/C.6/55/L.2, A/C.6/56/L.9, A/C.6/57/L.9, A/C.6/58/L.10 and A/C.6/59/L.10.

# Annex

## Informal summaries by the Chairman of the Working Group of the results of the informal consultations on the draft comprehensive convention and of the discussions in the Working Group on the question of the convening of a high-level conference

### A. Draft comprehensive convention on international terrorism

1. On 11 October 2005, the Chairman conducted informal consultations on the outstanding issues of the draft comprehensive convention. The Chairman, together with the Friends of the Chairman, also held wide-ranging bilateral contacts with delegations on 11 to 13 October. The focus of the consultations was on a proposal regarding the preamble, the outstanding proposals regarding article 18[a] and the proposal made by Cuba to article 2, paragraph 4.[b]

#### New preambular paragraph

2. In introducing a non-paper for discussion on a new preambular paragraph, the Chairman indicated that it had emerged from the informal consultations, in the context of the Sixth Committee, held from 25 to 29 July 2005. The new preambular paragraph read as follows:

> "Reaffirming that in accordance with the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, all peoples have the right to self-determination, freedom and independence, and that those peoples that have been forcibly deprived of its exercise have the right to struggle to that end, in conformity with the relevant principles of the Charter and of the above-mentioned Declaration,"

3. While some delegations saw no difficulty in reaffirming the right to self-determination in a preambular paragraph, they stated that such a paragraph should be seen as part of a package, which should include the former Coordinator's text of draft article 18, without any change. It was also noted that reference to "peoples" in draft article 18, paragraph 1, was an implicit reference to the right to self-determination, which would then be reaffirmed in the preamble, thus avoiding reopening discussions on draft article 18.

4. Some other delegations, while welcoming the idea of reaffirming the right to self-determination in the preamble, observed that such an approach did not add any value and would not address their concerns relating to draft article 18. It was stressed that the debate should focus on the outstanding issues which should be resolved in the context of that draft article and in that regard they reiterated their support for the text proposed by the Organization of the Islamic Conference (OIC) for draft article 18.

5. Other delegations found the proposal useful and suggested, in view of the importance that they attached to the issue, to move it to the operative part of the draft convention.

6. In commenting on the text of the proposed preambular paragraph, several delegations noted that there could be improvements in its formulation. In particular, it was pointed out that while the right to self-determination existed under international law, any formulation in the draft convention in that regard should refrain from creating new rights. It was suggested that a shorter preambular paragraph could limit itself to "reaffirming the right to self-determination of peoples in accordance with the Charter of the United Nations and the Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations".

7. Some other delegations stressed the need to reflect properly the distinction between internal and external self-determination in the proposal. In this context, it was suggested to delete either the reference to the two Covenants, or, alternatively, the last part of the sentence, after the word "independence". Furthermore, concern was also expressed that the reference to "all peoples" was too broad and that the word "all" should be replaced by "those". It was also suggested that the proposal should refer to General Assembly resolution 1514 (XV).

8. Some other delegations expressed concern over the reference to the right to struggle in the exercise of the right to self-determination in that it might be construed as condoning certain terrorist acts. In response, however, it was pointed out that the right to self-determination was intertwined with the right to exercise it and that, therefore, the latter element was relevant to the discussion. It was also observed that peoples did not commit terrorist acts, only individuals and groups.

**Draft article 18**

9. Some delegations stressed that a solution to draft article 18 was crucial to resolving outstanding issues concerning the draft convention. Delegations reiterated their positions with regard to the text circulated by the former Coordinator and the text proposed by OIC, respectively.[a] These texts read as follows:

> "***Text circulated by the Coordinator for discussion***
>
> "1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States, peoples and individuals under international law, in particular the purposes and principles of the Charter of the United Nations, and international humanitarian law.
>
> "2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention.
>
> "3. The activities undertaken by the military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.
>
> "4. Nothing in this article condones or makes lawful otherwise unlawful acts, nor precludes prosecution under other laws.

*"Text proposed by the Member States of the Organization of the Islamic Conference*

"1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States, peoples and individuals under international law, in particular the purposes and principles of the Charter of the United Nations, and international humanitarian law.

"2. The activities of the parties during an armed conflict, including in situations of foreign occupation, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention.

"3. The activities undertaken by the military forces of a State in the exercise of their official duties, inasmuch as they are in conformity with international law, are not governed by this Convention.

"4. Nothing in this article condones or makes lawful otherwise unlawful acts, nor precludes prosecution under other laws."

10. Delegations expressing support for the text circulated by the former Coordinator pointed out that it was a compromise text which represented significant concessions. In particular, reference was made to the fact that the word "peoples" had been included in paragraph 1, to recognize the right to self-determination. According to their view, the former Coordinator's text offered legal precision, necessary for a criminal law instrument. In that context, the point was made that the term "armed forces" was unambiguous and well-defined in international humanitarian law.

11. Some other delegations reiterated their support for the OIC proposal and stressed that it constituted a compromise text which intended to create a balance between the different parties to an armed conflict and to properly distinguish activities in time of war and in time of peace. Noting also that compromises had been made by the sponsors of the OIC proposal, it was recalled that, initially, OIC had proposed an explicit exclusion of a wide range of situations to draft article 2 (A/C.6/55/WG.1/CRP.30) prior to making the current proposal (see A/C.6/55/L.2, annex III).

12. Some delegations expressed concern that the term "parties" used in the OIC text was ambiguous and would exclude a broad range of non-State actors from the scope of the draft convention. Such broad exemption carved out the possibility for providing a legal basis for certain terrorist acts, such as suicide bombings. Such a situation was in contrast to the Secretary-General's moral clarity call for a definition of terrorism that would include any action intended to cause death or serious bodily injury to civilians and non-combatants with the purpose of intimidating a population or compelling a Government or an international organization to do or to abstain from doing any act.

13. Some other delegations observed that the term "parties" was already used and recognized as such in the Geneva Conventions, in particular, in Additional Protocol I of 1977. Accordingly, it was suggested that, if necessary, the term "parties" could be defined in the draft convention. It was also emphasized that armed forces should not be given preferential treatment as compared with other subjects whose activities during armed conflict are governed by international humanitarian law. Furthermore,

these delegations also clarified that the OIC text did not exempt, and should not be interpreted as exempting acts targeting civilians from the scope of the draft convention, including suicide bombings. In any circumstance, the targeting of civilians would be prosecuted either under the draft convention or under international humanitarian law, and such an understanding could be made explicit if necessary.

14. With regard to the reference to foreign occupation in the OIC text, it was observed that, pursuant to article 1, paragraph 4, of the 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), acts of armed forces during an armed conflict included situations of foreign occupation and that, therefore, such reference in the OIC text was superfluous. Other delegations took a narrower view and expressed concern that a reference to foreign occupation in draft article 18 could imply that such situations were excluded from the scope of the draft convention. On the other hand, some delegations noted that since situations of foreign occupation were already governed by international humanitarian law, the OIC text presented the correct legal position. In that regard, a point was made that it was necessary to clearly demarcate the two situations, namely situations in which the convention would apply and in which international humanitarian law would apply.

15. In response to a concern that the former Coordinator's text would exclude all activities of armed forces from the draft convention, it was clarified that only those activities already governed by international humanitarian law were exempted. In that context, the question was raised whether delegations would accept the principle that all acts governed by international humanitarian law should be excluded from the scope of the draft convention. While several delegations expressed support for that approach, other delegations commented that a thorough consideration of all aspects of the question was required.

16. In an effort to bridge the difference between the two positions, a suggestion was also made to delete paragraphs 2 and 3 entirely.

17. During the bilateral contacts some delegations expressed their readiness to explore other possibilities of reaching agreement on the outstanding issues, particularly in the context of draft article 18. Indeed, some delegations suggested specific ways in which this could be done, either by replacing particular paragraphs of draft article 18 or by adding additional paragraphs to clarify further the relationship between the present draft convention and international humanitarian law. The importance of not criminalizing acts which are governed by international humanitarian law and not prohibited by that law was also stressed. Some delegations encouraged the Chairman and the Friends of the Chairman to consider presenting texts that might help to advance the process.

**Proposal relating to draft article 2, paragraph 4**

18. With respect to the proposal by Cuba for the inclusion of a new paragraph 4 (d) in draft article 2,[b] the sponsor delegation noted that it was intended to cover acts by those in a position of control of the armed forces of a State. It was important for the international community to stress that such persons did not have a blank cheque to commit terrorist acts. The text, read as follows:

"Being in a position to control or direct effectively the actions of troops belonging to the armed forces of the State, orders, permits, or actively participates in the planning, preparation, initiation or execution of any of the offences set forth in paragraphs 1, 2 or 3 of the present article, in a manner incompatible with international law, including the Charter of the United Nations."

19. Some delegations expressed their support for the proposal, noting that it would fill a gap in the current text of draft article 2. Such a proposal was in line with the effort to elaborate a truly comprehensive convention. Some delegations observed that the proposal would be applicable only in situations not covered by international humanitarian law.

20. It was suggested that the provision be broadened to include all aspects of command responsibility under international criminal law.

21. Some other delegations indicated that they had difficulty with the inclusion of the new paragraph 4 (d) as proposed by Cuba. In the first place, the proposal was already covered by the provisions of the draft articles 2 and 18, paragraph 4. Moreover, according to the delegations the provision seemed to go in the direction of establishing a concept of State criminality, and covered issues already regulated by other fields of international law, including international humanitarian law. It was also noted that the proposal would have the effect of shifting the debate from draft article 18 to draft article 2, thereby reopening issues, which would be a setback to the negotiation process. It was further pointed out that, as drafted, the proposal created an ambiguity by specifying that it applied to terrorist offences perpetrated "in a manner inconsistent with international law", thereby conveying the impression that certain offences covered under the convention would not otherwise be inconsistent with international law.

22. In reply, the sponsor delegation explained that its proposal was not aimed at criminalizing acts of States, but those of individuals who were in charge of armed forces of States. Moreover, to the extent that elements of the proposal were already covered by draft articles 2 and 18, it would be beneficial to clarify the matter in the text of the convention. The degree of detail would be important in that regard.

23. During the bilateral contacts, several delegations expressed reservations regarding the possibility of reopening the consideration of draft article 2.

## B. Question of the convening of a high-level conference

24. The Working Group considered the question of the convening of a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations, as mandated by the General Assembly in resolution 59/46, against the background of the proposal for the convening of a special session of the General Assembly to examine and adopt an action plan for cooperation against terrorism at its 2nd meeting, on 12 October 2005.

25. The sponsor delegation stated that Egypt had initially proposed the convening of a high-level conference in 1986, and that the item had been introduced in the Sixth Committee in 1999. In the light of the recent developments and the dramatic increase of terrorist incidents throughout the world, intensification of the counter-

terrorism measures with the United Nations had become a priority. Despite measures adopted at the national and regional levels and by the United Nations, there was still a need to adopt an action plan within the United Nations to cover both legal and procedural aspects of cooperation to eliminate terrorism. The proposed action plan, which would be adopted at a high-level special session of the General Assembly, should focus on delivering a political message demonstrating the solidarity and unity of the States Members of the United Nations against terrorism, on enhancing international cooperation, especially by increasing coordination between States and the United Nations on combating terrorism, and on arriving at an agreement on the main elements to be included in an international plan of action against terrorism.

26. In their comments, some delegations expressed support for the proposal. The working paper submitted by Egypt was considered to be a good basis for discussion. The view was expressed that the convening of such a conference was timely, as it was called for in the 2005 World Summit Outcome. It could also send a strong message demonstrating the resolute will and unity of the international community in the fight against terrorism. It was pointed out that the United Nations had multifaceted functions, and should not be limited to addressing the legal aspects of terrorism only, but should consider practical aspects of combating terrorism as well. Concerning the mandate of the conference, a number of additional ideas were offered, including on the need for a definition of terrorism in all its forms and manifestations, the importance of implementing existing international agreements against international terrorism, and the need to tackle other crimes that were linked with terrorism, such as drug trafficking and money-laundering.

27. Some other delegations, on the other hand, expressed their doubts about the convening of such a conference and sought clarifications on its timing, agenda and outcome. In particular, clarifications were sought regarding, inter alia, whether the recent proposal of Egypt on the convening of a special session of the General Assembly was a replacement of its previous proposal on the convening of a high-level conference or was an additional proposal; whether the proposed conference was envisaged to be convened before or after the adoption of the draft comprehensive convention; and whether preparatory work would begin in parallel with the continued negotiations on the finalization of the draft comprehensive convention.

28. It was further observed that, in accordance with the 2005 World Summit Outcome, the General Assembly should accord priority to the finalization and adoption of the draft comprehensive convention. The political message on condemnation of terrorism in all its forms and manifestations had already been conveyed through the 2005 World Summit Outcome, and the convening of the proposed conference should be addressed after the completion of the work on the draft comprehensive convention. It was stated that careful preparatory work was required in advance of the convening of the proposed conference, to ensure its success. Preparatory work would be needed to achieve results that demonstrate unity and not division in the fight against terrorism. The view was also expressed that in the preparation for such an event care should be taken to avoid duplication. It was noted that the preparation of a strategy on combating terrorism is currently being undertaken under the leadership of the President of the General Assembly, following the mandate received from the 2005 World Summit Outcome.

29. Concerning the proposed topics for discussion in the working paper submitted by the sponsor delegation (A/C.6/60/2, annex), the view was expressed that, in the event of the convening of such a conference, any preparatory work should address only the operational and implementation aspects indicated in the working paper. The political aspects of the working paper were adequately covered by the existing instruments.

30. In response to the queries, the sponsor delegation stated that it had originally proposed the convening of a high-level conference, but considering the recent developments his delegation was inclined to opt for the convening of a high-level special session of the General Assembly since it was a more practical way of addressing the matter. Concerning the timing, the sponsor delegation agreed that priority should be given to the finalization of the draft comprehensive convention. However, there should not be a linkage between the conclusion of the draft comprehensive convention and the convening of such a conference. Nevertheless, the preparatory work on the conference could start alongside such negotiations. As regards the aim of the event, he observed that in the ongoing efforts to combat terrorism close coordination between States and the United Nations was essential. The aim would be to demonstrate the unity and solidarity of the international community on the question.

*Notes*

[a] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 37* (A/57/37), annex IV.

[b] Ibid., *Sixtieth Session, Supplement No. 37* (A/60/37), annex IIIA.